No. 13,671

IN THE

United States Court of Appeals

For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WATERFRONT EMPLOYERS OF WASHINGTON; LOCAL 19, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION; and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,
Respondents.

On Petition for Enforcement of an Order of the National Labor Relations Board.

BRIEF FOR RESPONDENT INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION.

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Subject Index

Table of Authorities Cited

Cases

Statutes

Constitutions

Texts

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JURISDICTIONAL STATEMENT.

This Court has jurisdiction of this cause under the provisions of Sec. 10(e) of the Labor-Management Relations of 1947 (29 USCA §160(e)). The cause is brought by the National Labor Relations Board (hereinafter called the Board) for enforcement of its or-

der dated February 26, 1952, against this respondent and other respondents.

STATEMENT OF THE CASE.

Insofar as concerns this respondent, International Longshoremen's and Warehousemen's Union (hereinafter referred to as the International or the ILWU) some of the facts pertinent to the case regarding other respondents are not material. The various respondents having filed individual briefs and the Board having filed a brief against all of the respondents, those facts, immaterial as to this respondent, are doubtless adequately set before the Court.

The order of the Board was entered after a hearing and a reversal of the hearing officer's Findings of Fact, Conclusions of Law, and Recommended Decision. The hearing was held upon a consolidated complaint initiated by the filing of certain charges of unfair labor practices against this and other respondents. The charges were filed separately by Clarence Purnell and by Albert G. Crum. Since one of the important issues in the case is the six month limitation upon the period when complaints may be filed, set forth in Sec. 10(b) of the Act, the dates and allegations of the charges with regard to this respondent are important.

Charges filed by Purnell.

The original charge filed by Purnell (R. 13) on February 21, 1949, was against Local 19, ILWU, a local union affiliated with this respondent, and against

certain employer respondents. On September 21, 1949, this charge was purported to be amended by adding the ILWU as a party respondent. This "amendment" (R. 3-8) charged this respondent, together with respondent Local 19 with discriminatory refusal to dispatch Purnell, thereby causing the employer to deny him employment because of his union status.

The complaint in Paragraph XIV (R. 34) charges that the respondent ILWU and respondent Local 19 refused to dispatch Purnell from the hiring hall to "available longshore or dock jobs which he was seeking and for which he was qualified" beginning on or about September 3, 1949.

Charges filed by Crum.

Crum filed an original charge on June 14, 1949 (R. 11-12), against this respondent alone, charging that at some unspecified time this respondent has refused to authorize Crum's employment for reasons unconnected with his payment of dues or initiation fees to the union. The complaint (R. 33) charges in Paragraph XIII that the respondent ILWU and respondent Local 19 refused to dispatch Crum from the hiring hall to "available longshore or dock jobs for which he was qualified" because he was not a member in good standing of the two union respondents. These acts were alleged to have begun on or about January 29, 1949.

This was "amended" on December 1, 1950, to charge Local 19 jointly with this respondent.

The consolidated complaint.

The consolidated complaint issued by the Board charged this respondent with the following violations of the Act:

(a) Violation of 8(b)(2) by (1) executing and (2) "actively participating in the enforcement of" a certain contract entitled "The Dock Agreement" (Paragraph XVII, R. 35). This agreement contained an allegedly illegal clause giving preference of employment to members of "the Union". According to the allegation of Paragraph XI of the complaint (R. 32), it was entered into by certain employer respondents and Local 19 but not by this respondent. It governed dock work in Seattle, Wash. Further, it was charged (3) that this respondent, with respondent Local 19, discriminatorily refused to dispatch Crum and Purnell.

(b) By the acts set forth above, according to the allegation of the complaint, this respondent restrained and coerced employees in the exercise of rights guaranteed by Sec. 7 of the Act in violation of Sec. 8(b)(1)(A) of the Act. (Paragraph XVIII, R. 35.)

Evidence.

As to the first violation of the Act charged against ILWU, that is, entering into the Dock Agreement, there was no evidence that this respondent had anything to do with it. The agreement, in evidence as General Counsel's Exhibit 4-B (R. 268), purports by its terms to be an agreement between the Waterfront Employers of Washington (hereinafter referred

to as WEW) and "Local 19, ILWU, hereinafter designated as the union." Its signatories purported to represent Local 19 and the WEW (R. 296).

As to the charges of "actively participating in the enforcement of" the Dock Agreement, and the alleged discrimination against Crum and Purnell, the evidence against this respondent is documentary, intended to found certain inferences indulged by the Board. There is no evidence of any "active participation" at all. The total evidence is as follows:

(1) That certain collective bargaining agreement referred to as the Coast Longshore Agreement or Pacific Coast Longshore Agreement, dated December 6, 1948, states in its first paragraph that it is an agreement between the Waterfront Employers of Washington and other employer groups and the ILWU (R. 229). It contains in Sec. 7(a) a statement that the hiring of all longshoremen shall be through halls maintained and operated jointly by the ILWU and the respondent employer associations through a central hiring hall in each of the ports. It provides that all exepnse of the dispatching hall shall be borne one-half by ILWU and one-half by the employers.

(It provides further that every registered longshoreman who is not a member of the ILWU shall pay to the union, toward the support of the hall, a sum equal to the pro rata share of the expense of the hall paid by each member of the union.)

In the same subsection it is provided that the personnel for the hiring hall shall be determined by

the Labor Relations Committee of the port, and that dispatchers shall be selected by the union through elections in which candidates shall qualify according to standards prescribed and measured by the Labor Relations Committee of the port. It provides also that all personnel of the hiring hall, including dispatchers, shall be governed by the rules and regulations agreed upon by the port Labor Relations Committee and shall be removable for cause by that committee.

In Sec. 14(c) (R. 260) it is provided that the parties to the contract shall establish and maintain a port Labor Relations Committee for each port affected by the agreement, each of the said committees to be comprised of three representatives designated by the union and three representatives designated by the employers. The duties of the port Labor Relations Committee include the maintenance and operation of a hiring hall and the control of registration lists of registered longshoremen.

The members of the Seattle Port Labor Relations Committee were appointed by Local 19 and WEW, and no participation by this respondent in its organization or activities was shown, or occurred.

(2) There was evidence that one Gettings, a representative of the ILWU, as distinguished from Local 19 (R. 533), was consulted by the complainant Crum after the president of Local 19 had, according to Crum, informed Crum that his name would be taken off the work list until a fine imposed by the union

upon Crum as one of its members should be paid. Crum asked Gettings if it was not true that under the constitution of the International Union he was entitled to work for thirty days after the imposition of a fine, and Gettings replied that he could (R. 371-372).

No other evidence was introduced which would involve the ILWU in any of the alleged discriminations. ILWU, if any discriminations occurred, is responsible only because of the fact that it is an international union with affiliated local unions, one of whom, Local 19, was found to have caused the employers to discriminate against Crum and Purnell.

The constitution of the ILWU is in evidence as General Counsel's Exhibit 8 (R. 535). It there appears that as is usual in the constitutions of international unions, the International Union issues charters to local unions (R. 537); that it is the duty of local unions to observe and comply with the provisions of the International constitution, but that the local unions may adopt and enforce all necessary laws for local government not conflicting with the constitution or decisions of the International (R. 537); that the local unions may adopt and amend local constitutions and by-laws and local agreements with employers (R. 538).

The facts re discrimination against Crum and Purnell.

The Board maintains that this respondent is responsible for the alleged discrimination against Crum and

Purnell. This is said to follow from the alleged delegation of this respondent's contractual rights to respondent Local 19. This respondent believes that the general counsel failed to establish the discrimination alleged in the complaint, and it is necessary, therefore, to discuss very briefly the facts regarding the alleged discriminatory action.

The facts regarding the alleged discrimination are set forth in the brief filed on behalf of the Board at pages 10 to 15. In the main the statement set forth there is correct, but the following additions to the factual statement should be noted:

A. Crum.

(1) After Crum had ascertained that the union rules prescribed a penalty of inability to work, *as a member of the union,* (i.e., without affecting his right to work as a registered longshoreman) until a regularly imposed fine had been paid, and that this penalty began thirty days after the imposition of the fine by the local union, he did not ever again attempt to obtain employment through the hiring hall.

(2) No evidence was received for the purpose of showing that Crum sought work as a longshoreman in any other manner. Evidence limited to the purpose stated by its proponent, that is, to establish that all hiring was done through the hiring hall, was received (R. 376-379) and showed that at unspecified times Crum approached one Bill Hamley of the Alaska Steamship Company, which does not hire longshore-

men (R. 88, n. 11), and asked whether he could work for Hamley (R. 379). He also approached one Ernie Reems, who, according to the witness's testimony, may have been superintendent for the Alaska Forwarding Company, where he asked whether Reems would give him a statement to the effect that he would be hired if he were dispatched from the hiring hall (R. 380). Finally, at some other unspecified time Crum approached Tommy Green, whom he believed to be superintendent of the Rothschild International Stevedoring Company, and asked whether he could work for Green, and was told that he could work at any time he was dispatched from the hiring hall (R. 380). He carefully refrained from asking for employment.

(3) Crum's earning record (Employer Exhibit 7, R. 492) compared with the average earnings of longshoremen for the years 1945-1948, inclusive (Employer Exhibit 8, R. 501) shows that his earnings were far below the average. The record showed that in 1945 he earned nothing as a longshoreman; in 1946 he earned about one-seventh of the average earnings of longshoremen; in 1947 he earned about half the average earnings; in 1948 a little less than half. The records of other men removed during 1948 and 1949 from the registration list because of low earnings or parttime work in the longshore industry (Employer Exhibit 9, R. 503) show that his earnings were consistent with the earnings of other men removed from the registration lists.

(4) Crum's primary interest and source of income was that of a farmer. He owned a farm in Idaho which he acquired in 1946, and which he worked thereafter except for the year 1947 when he leased it. He spent all of his time on the farm except when the weather was too wet or cold to allow him to work there (R. 383-390).

(5) His reluctance to work was illustrated by his statement volunteered during the course of the hearing (R. 389) that in July of 1949 when he returned to Seattle for a few days from his Idaho farm, he refused to accept longshore employment, explaining that he had just dropped around to the hiring hall on a social visit. However, under pressure, he reluctantly agreed to take what he expected to be four hours of work, because of the shortage of longshoremen in port. This evidence should be considered in connection with his testimony that he did not at any time seek dispatch from the hiring hall after the thirty day period for payment of his fine.

B. Purnell.

(1) Purnell was physically unable to work for thirty days after the imposition of a fine by Local 19 and never thereafter attempted to obtain employment as a longshoreman. The statement in the Board's brief at page 14, that he inquired at several companies for which he had worked, is not supported by the record. His testimony at page 424 shows that on one occasion in 1949 he asked a foreman on the dock whether he had always afforded satisfaction in his

work. The record at page 424 has his testimony that he "contacted the foreman at Luckenbach" but what he contacted him about is not revealed. There is no evidence that he sought work as a longshoreman either through the hiring hall or directly from employers at any time after Local 19 imposed the fine.

(2) Although Purnell at no time after the imposition of the union fine sought employment either through the hiring hall or in any other way, he was then and remained up to the time of the hearing on the list of registered longshoremen and on the dispatching board at the hiring hall (R. 507-508; 510); he was eligible for dispatch as a registered longshoremen (R. 477-478, 507-508, 514); he knew that his name was on the board (R. 442).

(3) Purnell last worked as a longshoreman in September of 1948 when a strike tied upon the waterfront until December, 1948 (R. 433). After that he commenced work in the first of a series of barber shops which he owned and operated. He was operating the first of these barber shops in January 1949 (R. 430). He sold this shop in April 1950 for $7,000 and in September of the same year opened up a new barber shop two blocks away (R. 432). During the period of 8 to 9 months following July 1949 he worked also at Bow Lake Harbor as a janitor (R. 437), keeping his barber shop open at the same time.

(4) His arthritis, which prevented his working as a longshoreman because it involved exposure to the elements (R. 438), prevented him from working

in November and December 1948 and January and February of 1949. There was no evidence that he was physically able to work as a longshoreman at any time thereafter. He testified (R. 439) that his arthritis was not yet cured at the time of hearing.

The Trial Examiner's findings.

The Trial Examiner found that there was no evidence to show that the ILWU was involved in the execution of the Dock Agreement (R. 82); that the evidence showed that only Local 19 enforced the coast contract (R. 97-99); that Purnell was not discriminated against by Local 19 or by WEW; that Crum was in fact a farmer, not seeking work as a longshoreman (R. 95), and that his removal from the registration list was justified and in accordance with established practice (R. 96); and that there was no evidence of any violation of the Act, charged in the complaint, against the ILWU.

With regard to the complaint, as against this respondent, the Trial Examiner said (R. 99):

> "The undersigned, therefore, finds in conformity with the facts that ILWU did not enforce or assist in the enforcement of the Coast Agreement here nor of the Dock Agreement to which ILWU was not even a signatory. In view of these findings the undersigned will recommend that this complaint in its entirety be dismissed as to ILWU."

The Findings of the Board.

(1) The Board found that in spite of the absence of any application by Purnell to the hiring hall for work after the 30-day period, it would not be "pure speculation and surmise" to find that Purnell would not have been dispatched had he actually made the application. Thus the Board reversed the Trial Examiner's ruling that a finding that Purnell would not have been dispatched could be made only if there were evidence to support it. The Board concluded that Purnell's application for work would have been a futile gesture. The Board found, therefore, in spite of the absence of any evidence that Purnell sought work, that he was denied work discriminatorily (R. 146).

(2) Overruling the Trial Examiner the Board found that the deregistration of Crum did not reflect a "good faith" application of waterfront employment policy (R. 156). This finding was based upon an evaluation of the testimony different from the Trial Examiner's, and upon an acceptance of the General Counsel's contention that "irrespective of the validity of the Trial Examiner's subsidiary findings concerning the applicability of the 'employment' policy to Crum, and 'the good faith' of the reasons underlying its application to him, the Board should not permit the respondents to assert this kind of action [i.e., removal of a longshoreman's name from the registration list] as a bar to an unconditional reinstatement and back pay order". The Board does not say why this defense should not be permitted (R. 152).

(3) The Board, although acquiescing in the Trial Examiner's finding that there was no evidence indicating a specific knowledge and ratification by the ILWU of the acts forming the subject of the complaint, reversed the Trial Examiner and found the ILWU liable for discriminatory enforcement of the Coast Agreement (R. 147-148). This is stated to be on the basis that the ILWU delegated its contractual powers under the Coast Agreement to the local. Under those circumstances the absence of evidence indicating knowledge and ratification of the alleged discriminatory acts is held to furnish "no basis for relieving it from liability."

(4) The Trial Examiner had ruled (R. 77) that the statute of limitations contained in Sec. 10(b) of the Act barred the complaint by Purnell against the ILWU. This was on the ground that although Purnell had filed a charge on February 21, 1949, alleging discrimination on February 3, 1949, this charge had been against Local 19 alone. On September 21, 1949, Purnell purported to amend the charge by adding ILWU as a respondent. On the basis of this "amendment," the complaint (R. 34) charges in Paragraph XIV that beginning on or about February 3, 1949, the respondent ILWU and respondent Local 19 refused to dispatch Clarence Purnell. The Trial Examiner said (R. 77):

> "For the reasons discussed above and the fact that the alleged unfair labor practices of ILWU referred to therein had occurred more than six months prior to this 'amended charge' the com-

> plaint against ILWU on the charges by Purnell is barred by Sec. 10(b) of the Act."

The Board in a footnote at page 147 of the record says:

> "In view of Crum's 'timely' charges against the ILWU, as described in the Intermediate Report, we find, contrary to the Trial Examiner, and for the reasons indicated above, that there is no procedural bar to the assessment of liability against the ILWU for the discrimination in the case of Purnell, as well as Crum."

So far as it is possible to find the "reasons indicated above" in the Board's decision, this appears to refer to the discussion in Sec. A of the Board's reply (R. 132-139). The significant portion of that discussion appears at page 134 and deals with the question of the date of *execution* of the Coast Agreement. The Board holds that the complete Coast Agreement was not formally signed and executed until February 1949, a date within the six month period preceding the filing and service of the June 14 charges. The significance of this discussion in the case of the ILWU is not apparent since the execution and maintenance of the Coast Agreement was not charged as an unfair labor practice against the ILWU (R. 133, footnote 4).

Apparently, therefore, the Board ruled in footnote 19a at pages 147-148 of the record, that because Crum had filed timely charges against this respondent, this respondent could be held liable for discrimination against Purnell.

STATEMENT OF ERRORS TO BE URGED.

I. The order of the Board as to this respondent is not supported by substantial evidence, or by any evidence.

II. The order of the Board as to this respondent is erroneous as a matter of law.

SUMMARY OF ARGUMENT.

I. The order of the Board may not be enforced as to this respondent because it is not supported by substantial evidence, or any evidence, in the following respects:

A. There is no evidence that this respondent participated in the alleged discriminatory acts against the complainants Crum and Purnell.

B. There is no evidence that this respondent authorized any discriminatory acts by respondent Local 19, nor that it ratified any such acts, nor that it delegated any authority for such acts to respondent Local 19.

C. There is no evidence that the complainants Crum and Purnell were denied dispatch to longshore jobs.

D. There is no evidence that the complainants Crum and Purnell were seeking longshore work.

E. There is no evidence that at the times material herein the complainants Crum and Purnell were qualified for longshore work.

II. The order of the Board may not be enforced because it is erroneous as a matter of law in the following respects:

A. The Board erred in impliedly overruling the Trial Examiner as to the effect of Sec. 10(b) of the Act upon the charges filed by complainant Purnell.

B. The Board erred in ruling that complainant Crum is entitled to reinstatement despite his removal from the list of registered longshoremen.

C. The Board erred in ruling that this respondent is liable for the acts of respondent Local 19.

ARGUMENT.

I. THE BOARD'S ORDER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Trial Examiner found that there was no evidence of the participation by this respondent in the alleged discriminatory actions against Crum and Purnell. For this reason he recommended the dismissal of the complaint in its entirety as against this respondent. The Board in overruling him on this point notes the absence of any such evidence and says:

> "However, for reasons set forth in the Board's decision in the Sorce and Stafford-ILWU case, we believe that the ILWU's delegation of its contractual powers to the local furnishes no basis for relieving it from liability." (R. 148.)

It is clear, of course, that the ILWU does not regard delegation of its contractual powers to the local as a basis of relieving it from liability. This respondent relies upon the *absence* of any such delegation to relieve it from liability. There is no evidence of such delegation.

The question here is very briefly this: Is an international union responsible for the discriminatory acts of one of its autonomous local unions where the evidence reveals that the international does not participate in nor ratify the acts of the local? This question has been conclusively answered by the Supreme Court of the United States in the *Coronado Coal* cases, 259 U.S. 395, 42 S.Ct. 577, and 268 U.S. 295, 45 S.Ct. 551. No subsequent authority has purported to overrule the holding in the *Coronado* cases on this point.

As the Court said in the first *Coronado Coal* case, and reaffirmed in the second:

> "Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency which the constitutions of the new bodies settle conclusively." 268 U.S. 304-5, 45 S.Ct. 554.

Cf. *ALI,* Restatement of Agency, § 1:

> "(1) Agency is the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

(2) The one for whom action is to be taken is the principal.

(3) The one who is to act is the agent."

There is no need for authority for the proposition that agency is a matter which may be demonstrated by evidence. It is not disputed that there is no such evidence in this case. Under the Act and the well-respected and well-settled rule of *Universal Camera Corp. v. NLRB,* 340 U.S. 474, 71 S.Ct. 456; *NLRB v. Pittsburgh SS. Co.,* 340 U.S. 498, 71 S.Ct. 453, the Board's order must be supported by substantial evidence.

Even assuming that by some special dispensation the Board may dispense with a requirement of substantial evidence of the principal and agent relationship between this respondent and Local 19, there is no evidence to support the charge of discrimination against Crum and Purnell. It is not disputed that there is some evidence that the local union may have *intended* to cause discrimination against Crum and Purnell (it is not conceded that this evidence is substantial), but as the Trial Examiner noted, the only way in which to test whether discrimination would have occurred would be for the complainants to actually seek work and discover by this test whether there would have been any discrimination. The evidence is completely undisputed that there was no opportunity for discrimination to occur.

The Act is not intended to punish an intention or state of mind. *Consolidated Edison v. NLRB,* 305

U.S. 197, 59 S.Ct. 206. It is necessary to establish that there was a concrete instance of discrimination. *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 61 S.Ct. 845. In the absence of any such concrete instance, the Board may not penalize this respondent, or any respondent, for what the Board thinks *might have happened* had the complainants actually sought work.

Furthermore, it is clear that there has been a complete failure of proof of an essential part of the allegation of the complaint. The complaint alleges that this respondent and Local 19 refused to dispatch Crum and Purnell and alleges as to each of the complainants that this was a refusal to dispatch "to available longshore or dock jobs which he was seeking and for which he was qualified * * *" The evidence is without contradiction that the complainants were not seeking longshore work in the only way in which they knew longshore work could be obtained. The complaint alleges in Paragraph XII (R. 33):

> "(b) all employers of longshoremen and dock workers in the Seattle port area have procured longshoremen and dock workers only through this central hiring hall;"

The operation of a hiring hall in itself is not charged as a violation of the Act.

Not only did the proof fail to establish that the complainants were seeking longshore work, it established that they were not qualified for longshore work. Crum was a farmer and spent most of his time on his farm in Idaho. In order to be qualified for long-

shore work under the practice in Seattle, it was necessary for a worker to be available regularly for full-time work as a longshoreman. This is a reasonable requirement. Crum was not available for such work. His lack of availability resulted in his removal from the list of registered longshoremen of the port. Whatever suspicions the Board may have about the motive of the union in proposing that Crum be removed from the registration list, these suspicions may not be substituted for evidence that Crum's removal was discriminatory.

To establish discrimination it is necessary to show that Crum's removal was for reasons unacceptable under the Act and not applied to other longshoremen. The record clearly establishes that Crum's removal, was in accordance with a long-standing and well-settled policy and based upon a thoroughly adequate factual background. The evidence in employers' Exhibits 7, 8 and 9, on the basis of which Crum's performance may be compared with that of other longshoremen and with other men removed from the registration list, establishes this factual basis beyond dispute.

Purnell was by his own admission not qualified for longshore work, because he was physically unable to perform the work at all times material to the complaint. He was unable to work because of his arthritis in November and December of 1948 and in January and February of 1949. No attempt was made to show that he was able to work at any time thereafter. Although he denied that it was because

of his arthritis that he did not later attempt to find longshore work, the only evidence about his subsequent physical ability to work was his testimony, elicited on cross-examination, that at the time of the hearing his arthritis had still not been cured (R. 439).

II. THE BOARD'S ORDER IS ERRONEOUS AS A MATTER OF LAW.

The principal error in the order of the Board as applied to this respondent is its ruling that in the absence of any evidence that this respondent, in the language of the complaint, "actively participated" in the enforcement of the discriminatory provisions of the agreement, it may nevertheless be held liable for the alleged discriminatory acts of Local 19. Compounding this error, of course, is the fact that the absence of evidence which the Board condones and finds no barrier to its order exists not only with respect to any active participation by the International, but also exists with respect to the alleged discriminatory acts.

The Board here holds that it may find this respondent liable for discrimination allegedly practiced by someone else in the absence of any evidence of its participation in the alleged discriminatory acts, and in the absence of any evidence that discrimination actually took place.

The error of such a ruling is so patent that no extended discussion seems necessary. Such a ruling is

prohibited not only by the Act and the rule of the *Coronado Coal* cases, supra, but by the guarantee of due process of law contained in the Fifth Amendment to the United States Constitution.

The Board erred also in its ruling reversing the Trial Examiner as to the statute of limitations contained in Sec. 10(b) of the Act. What the Board intended here is not entirely clear. In its discussion of the liability of the ILWU (R. 147-148), which it disposes of in one paragraph, it says in a footnote on this point:

> "In view of Crum's 'timely' charges against the ILWU, as described in the Intermediate Report, we find, contrary to the Trial Examiner, and for the reasons indicated above, that there is no procedural bar to the assessment of liability against the ILWU for the discrimination in the case of Purnell, as well as Crum."

On its face this statement appears to mean that the filing of a timely complaint by Crum against the ILWU is sufficient to remove the bar of Sec. 10(b) of the Act as against Purnell. No authority is cited for this proposition. If this proposition is to be accepted, then the filing of a complaint by one person against employers or labor organizations is sufficient to allow an order requiring reinstatement and back pay as to any number of other complainants who did not file charges or who did not file them within the time allowed by Sec. 10(b). This is indeed a new departure and the absence of any authority for the Board's position is understandable. The proposition

seems too preposterous to require any further discussion.

It should be noted that the Board cannot have relied upon Crum's mentioning discrimination against Purnell in a complaint timely filed against this respondent. The first time Crum did so was on December 1, 1950 (R. 13-14) when Crum charged discrimination against Purnell commencing February 3, 1949.

It may be that the Board did not mean what it said and that the solution to its ruling on this subject may be found in its reference to "the reasons indicated above". Immediately above the portion of the Board's order to which this footnote is appended is a discussion of the statute of limitations question with regard to respondent Local 19. As to that the Board first notes that the trial Examiner refused to hold Local 19 responsible for discrimination against Crum because he failed to file charges against Local 19 within 6 months after January 29, 1949, the date of the alleged discrimination. It then says that "for reasons indicated in Sec. A above" it is clear that the charges filed by Purnell provide a sufficient basis for the litigation of Local 19's discrimination as to both Purnell and Crum. Here again the Board seems to be saying that the filing of a complaint by one complainant enables it to find in favor of the other complainant also. However, in order to discover its meaning it is necessary to search Sec. A of the Board's order.

Section A (R. 132-139) is entitled "The discriminatory operation of the Seattle hiring-hall." In reject-

ing the argument that Sec. 10(b) bars the complaint as to respondents WEW and Local 19, the Board says at page 135:

> "The Trial Examiner concludes, and we agree, that the Respondent WEW violated Section 8(a)(3) and (1) of the Act by its execution and maintenance of the Coast and Dock agreements, and that the Respondent Local 19 violated Section 8(b)(2) and 8(b)(1)(A) of the Act by its execution and maintenance of the Dock agreement."

This concludes the only discussion of the limitations question in Section A of the Board's order. It does not deal with the effect of timely charges by one complainant on the absence of timely charges by another complainant. It rests upon the Board's conclusion that the execution of the Coast Agreement in February 1949 commenced the six month period within which Crum could file his complaint. But the execution of the Coast Agreement was not charged against this respondent, and the only discrimination alleged against this respondent by Purnell was the alleged failure to dispatch him on or about February 3, 1949. No charge against this respondent was filed by Purnell until September 21, 1949, more than six months later.

Returning to the footnote on page 147, it is still not clear from a search of the Board's opinion what the reasons are that enable it to escape the bar of Sec. 10(b) as to Purnell.

Finally, some attention should be given to the Board's order requiring this respondent and other

respondents to reinstate and make whole Albert Crum irrespective of his removal from the list of registered longshoremen. The Board discusses this at pages 151-157 of the record. The Board bases its decision primarily on a re-evaluation of the evidence which had led the trial Examiner to the opposite conclusion. The Board does not discuss the effect of this ruling upon the Coast Agreement governing the relations between Pacific Coast longshoremen and their employers, nor upon collective bargaining agreements generally. The legality of the collective bargaining agreement aside from its preference of employment clause is not disputed, and the Board has in this case, as well as in prior cases wisely refrained from attempting to make any order that the contract as a whole be disregarded.

The contract and its predecessors have for many years set up a stable method of governing labor relations on the Pacific Coast waterfronts. It sets up a bilateral method for listing those workers who are experienced and otherwise qualified as longshoremen and who by their qualifications are entitled to first call at the work. The Board's order completely disregarding this long-standing practice and its embodiment in a lawful contract would allow one who is not a registered longshoreman to occupy the same status as a registered longshoreman.

Under such a rule the possibility exists that any worker alleging that he sought longshore work, and that he was discriminated against in favor of registered longshoremen, may bring a charge against long-

shoremen's unions and their employers for reinstatement and back pay. This would create chaos on the waterfront. It is difficult to see how any such policy can be advanced by the Board as effectuating the purpose of the Act, which is to produce not chaos but stability in labor relations.

CONCLUSION.

For the foregoing reasons this respondent prays that the petition herein be dismissed as to all respondents and particularly as to this respondent, that the order of the Board be set aside, and that the Court decree to this respondent such other and further relief as may be deemed meet and propr.

Dated, San Francisco, California,
July 27, 1953.

Respectfully submitted,
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